



UNITED STATES PATENT and TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Mailed: AUG 21 2002

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Paper No. 9

In re application of

A. Dale Maddox et al.

Serial No. 09/578,810

Filed: May 24, 2000

For: SEALING BLADE

DECISION ON PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT, filed July 18, 2002 for failure to respond to the office action dated September 5, 2001. Applicants assert that the office action was never received.

DECISION


Since petitioner asserts that the office action was never received, the request is accepted as a petition under 37 C.F.R. 1.181 (no fee). A review of the petitioner's evidence provided with the instant petition indicates that the request does not have merit. The showing required to establish the failure to receive an Office Action must consist of 1) a statement from the practitioner attesting to the fact that the Office Action was not received (done), 2) **a statement that a search of the file jacket and docket records was performed and indicates that the Office Action was not received, and 3) copy of the docket record where the nonreceived Office Action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.** See MPEP 711.03(c).

Applicants have failed to adequately show the 2 highlighted requirements, as admitted in the petition, since at the time the office action was sent out, the present case was being prosecuted by another attorney(s), Harness Dickey and Pierce PLC. Therefore, it would be those records that would be needed as evidence to support a position of not receiving an office action. The prosecutors of the present application have not yet provided written proof of those records, as admitted. Additionally, the file records submitted for the present case show 6 different logs of "RESPONSE FILED-FOLLOW UP", several having the same date. Reviewer questions the content/nature of these logs since none of these entries are present in the file held by the USPTO and are not explained by the evidence submitted.

Therefore, the Notice of Abandonment dated May 15, 2002 is hereby maintained.

The Petition is **DENIED**.

If applicants' are unable to obtain the records from the previous firm, it is suggested that a Petition to Revive be filed to the Office of Petitions. Additionally, since this is a free Petition, and applicants' have been charged the \$130.00 as submitted, it is suggested that applicants' file a request for refund to the Office of Initial Patent Examination (OIPE).

A handwritten signature in cursive script, reading "Richard V. Fisher". The signature is written in dark ink and is positioned above a horizontal line.

Richard V. Fisher, Director
Technology Center 1700
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